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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

JESSIE WILLARD JONES,

Defendant and Appellant.

D070830

(Super. Ct. No. SCD250578)

APPEAL from a judgment of the Superior Court of San Diego County, Lorna A. Alksne, Judge. Affirmed.

Michael Bacall, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Peter Quon, Jr., and Susan Elizabeth Miller, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted Jessie Willard Jones of first degree robbery (Pen. Code,<sup>1</sup> § 221; count 1), residential burglary (§§ 459, 460; count 2), assault with a deadly weapon (§ 245, subd. (a)(1); count 3), assault by means of force likely to produce great bodily injury (§ 245, subd. (a)(4); count 4), assault with a firearm (§ 245, subd. (a)(2); count 5), and false imprisonment (§§ 236, 237, subd. (a); count 7). The jury found true a special allegation that Jones personally used a deadly and dangerous weapon—a firearm—to commit the robbery, residential burglary, assault with a firearm, and false imprisonment. (§ 12022.5, subd. (a).) In a bifurcated bench trial, the court found true allegations that Jones served four prior prison terms (§§ 667.5, subd. (b), 668), that Jones was convicted of a serious felony (§§ 667, subd. (a)(1), 1192.7, subd. (c)), and he was convicted of a serious or violent felony within the meaning of the Three Strikes law (§§ 667, subds. (b)-(i), 1170.12).

It sentenced Jones to a 28-year prison term consisting of 12 years (double the six-year term) for the count 1 robbery, a consecutive two-year term (double the one-third midterm) for the count 3 assault, a consecutive four-year term for the firearm use finding, and two consecutive five-year terms on counts 1 and 3 for the serious felony finding. The court stayed under section 654 the sentences on counts 2, 4, 5 and 7 and the enhancements on the true findings for the accompanying special allegations. The court struck the four one-year enhancements for Jones's prior prison terms pursuant to section 1385.

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<sup>1</sup> Undesignated statutory references are to the Penal Code.

Jones appealed alleging, among other things, sentencing error. (*People v. Jones* (Dec. 21, 2015, D065740 [nonpub. opn.] (Prior Opinion).)<sup>2</sup> We affirmed the judgment of conviction, but vacated the sentence and remanded the matter with directions to stay the sentence on count 3 under section 654 and apply only one section 667, subdivision (a)(1) enhancement, and otherwise resentence Jones. At the resentencing hearing, Jones asked the court to strike his prior strike conviction and sentence him to a total term of 15 years, rather than the 21 years suggested by probation and advocated by the People. The trial court declined to strike the strike prior and imposed the 21 year sentence, consisting of 12 years for count 1 (the middle term, doubled), a four-year term for the firearm use finding and a five-year term on the serious felony finding.

Jones's sole contention on appeal is that the court abused its discretion in failing to strike his prior strike conviction under *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*). He contends the matter must be remanded for resentencing because the trial court "reflexively" denied the motion without considering the mitigating factors supporting his request. Thus, he asserts it is reasonably probable that had the trial court properly exercised its discretion based on the required and permissible factors, it would have chosen to dismiss his strike prior in the interest of justice. We affirm.

### FACTUAL BACKGROUND<sup>3</sup>

"On the afternoon of September 3, 2013, 63-year-old Charles Williams was at home with his security door locked when Jones, who Williams knew from the

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<sup>2</sup> We grant Jones's request to take judicial notice of the record in his prior appeal.

<sup>3</sup> The factual background is taken from this court's Prior Opinion.

neighborhood as 'Peanut,' came to his door. Jones asked Williams about drugs and money, which Williams denied having. Jones got upset and left. After Williams sat back down to watch television, he saw another man he knew, Gilbert Truillo, [fn. omitted] at his door using a hammer to pry the door open. Truillo was with another man who Williams did not know; both had bandanas partially covering their faces.

"Truillo and the other man got the door open, and the unidentified man struck Williams in the head with the hammer. Truillo grabbed Williams by the neck. Both men tried to force Williams to the ground. While this happened, Jones came to Williams's door and told Williams to get down. Jones kicked Williams in the groin and then pulled a pistol on Williams, telling him to get on the floor or be shot. Williams, who had shot and handled guns before, described the gun as a black, nine-millimeter type pistol. It appeared to Williams to be a real gun, and it slowed him from resisting.

"While Williams was on the floor, Jones told the men to check his pockets; the unidentified man took money out of Williams's pocket and Truillo took Williams's wallet. Truillo then searched Williams's nightstand and demanded Williams's bank card number. During this time, Jones was sitting and holding the gun. The men left with Williams's cash, cell phone and other belongings.

"Eventually Williams left his home to call 911; he walked down the street to different friends' houses while Jones followed him on a bicycle. As he did so, he passed his neighbor's house where Truillo, Williams's neighbor Derrick Campbell and others were looking through Williams's wallet and passing out the contents. Williams eventually arrived at the home of Davina Mangan and called police, while Mangan

confronted Jones and cursed at him. After Jones said he had been trying to help Williams, Mangan apologized and told him they had called police, and Jones left. Mangan testified that she did not see a gun, hammer or any blood on Jones. Five to ten minutes after police arrived, officers found Jones and brought him to Williams, who identified Jones as one of the assailants.

"Campbell testified that on the day of Williams's assault and robbery, he found Truillo on his porch with another man, who was rummaging through Campbell's bag of construction tools. The men left after Campbell confronted them, but he later discovered a hammer was missing from the bag. Campbell denied going through Williams's wallet."

## DISCUSSION

In deciding whether to dismiss a prior conviction allegation under section 1385, a trial court must consider whether "in light of the nature and circumstances of his present felonies and prior serious and/or violent felony convictions, and the particulars of his background, character, and prospects, the defendant may be deemed outside the scheme's spirit, in whole or in part, and hence should be treated as though he had not previously been convicted of one or more serious and/or violent felonies." (*People v. Williams* (1998) 17 Cal.4th 148, 161.) A trial court has limited discretion to strike prior convictions in Three Strikes cases. (§ 1385; *Romero, supra*, 13 Cal.4th at p. 530.) We will not disturb the trial court's ruling absent an abuse of that discretion. (*People v. Carmony* (2004) 33 Cal.4th 367, 376 (*Carmony*).) "[A] trial court does not abuse its discretion unless its decision is so irrational or arbitrary that no reasonable person could agree with it." (*Id.* at p. 377.) A career criminal must show "extraordinary"

circumstances to fall outside the spirit of the Three Strikes law and the failure to strike a prior strike conviction will not constitute an abuse of discretion unless no reasonable minds could differ. (*Id.* at p. 378.)

The Three Strikes law "not only establishes a sentencing norm, it carefully circumscribes the trial court's power to depart from this norm . . . . [T]he law creates a strong presumption that any sentence that conforms to these sentencing norms is both rational and proper." (*Carmony, supra*, 33 Cal.4th at p. 378.) "The court is presumed to have considered all of the relevant factors in the absence of an affirmative record to the contrary." (*People v. Myers* (1999) 69 Cal.App.4th 305, 310.) "It is not enough to show that reasonable people might disagree about whether to strike one or more of his prior convictions. Where the record demonstrates that the trial court balanced the relevant facts and reached an impartial decision in conformity with the spirit of the law, we shall affirm the trial court's ruling, even if we might have ruled differently in the first instance." (*Id.* at p. 310.)

Here, the judge who presided over Jones's jury trial and heard Williams's testimony also presided over Jones's initial sentencing hearing and the resentencing hearing. As a threshold matter, we note that Jones kicked Williams in the groin and held him at gunpoint after his confederates hit Williams in the head with a hammer and grabbed him around the neck. Thus, the instant offense involved violence by Jones. Nonetheless, Jones argues that his involvement in the current offense was mitigated by the assistance he provided Williams after the incident which demonstrated his compassion and immediate remorse. Namely, the original probation report noted

Williams's trial testimony that while Jones's cohorts ransacked Williams's home, Jones handed Williams a towel for his bleeding head, gave him a drink of water and later obtained Williams's bus pass from the wallet his cohorts had stolen. In resentencing Jones, the trial court noted that it considered the compassion Jones had exhibited to Williams when it imposed the middle term instead of the upper term argued by the People.

Jones next argues that his prior strike may not have involved violence given the disposition of the matter. We disagree. The supplemental probation report prepared for the resentencing hearing revealed that in 2008 Jones pleaded guilty to making a criminal threat in exchange for having the following charges dismissed: corporal injury to spouse or roommate; assault with a deadly weapon; false imprisonment and robbery. While making a criminal threat (§ 422) does not involve violence, the facts of the incident show significant violence. Jones threatened to kill the victim, a person Jones was living with, after she refused to give him money. Jones punched the victim numerous times, pulled her by her hair, threw a fan at the victim, hit the victim in the face and threatened her with an empty vodka bottle stating, "I'll fuck up your face so you will never look good." Jones claimed that the victim " 'went crazy' " and that he " 'put [his] arms around her to calm her down.' " While it may be true that the victim went crazy, his argument that the conviction did not involve violence strains credulity as the victim's left eye was "swollen and black and blue" and her nose dripped blood.

Additionally, Jones is not a stranger to the criminal justice system. His criminal history, dating back to 1992, shows nine convictions, six of which were felonies, and

numerous probation and parole violations. During the resentencing hearing, the court heard a statement from Jones about his poor life choices, the classes he is currently taking and his desire to become a productive member of society. The court also heard a statement from Jones's mother. The record contains no affirmative indication that the trial court failed to consider these factors.

Even if we were to agree that the factors Jones urges support striking the strike, they do not support it so strongly that reasonable minds could not differ. His criminal history brings him squarely within the letter of the Three Strikes law and his circumstances are not so extraordinary that no reasonable person could conclude that he is not also within the spirit of the Three Strikes law. (*Carmony, supra*, 33 Cal.4th at p. 378.)

#### DISPOSITION

The judgment is affirmed.

NARES, J.

WE CONCUR:

McCONNELL, P. J.

O'ROURKE, J.